

SECOND REGULAR SESSION

SENATE BILL NO. 1066

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR KLINDT.

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TERRY L. SPIELER, Secretary.

4840S.03I

AN ACT

To repeal section 392.245, RSMo, and to enact in lieu thereof one new section relating to telecommunications companies.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 392.245, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 392.245, to read as follows:

392.245. 1. The commission shall have the authority to ensure that rates,
2 charges, tolls and rentals for telecommunications services are just, reasonable
3 and lawful by employing price cap regulation. Any rate, charge, toll, or rental
4 that does not exceed the maximum allowable price under this section shall be
5 deemed to be just, reasonable, and lawful. As used in this chapter, "price cap
6 regulation" shall mean establishment of maximum allowable prices for
7 telecommunications services offered by an incumbent local exchange
8 telecommunications company, which maximum allowable prices shall not be
9 subject to increase except as otherwise provided in this section.

10 2. A large incumbent local exchange telecommunications company shall
11 be subject to regulation under this section upon a determination by the
12 commission that an alternative local exchange telecommunications company has
13 been certified to provide basic local telecommunications service and is providing
14 such service in any part of the large incumbent company's service area. A small
15 incumbent local exchange telecommunications company may elect to be regulated
16 under this section upon providing written notice to the commission if an
17 alternative local exchange telecommunications company has been certified to
18 provide basic local telecommunications service and is providing such service, or
19 if two or more commercial mobile service providers providing wireless two-way
20 voice communications services are providing services, in any part of the small

21 incumbent company's service area, and the incumbent company shall remain
22 subject to regulation under this section after such election.

23 3. Except as otherwise provided in this section, the maximum allowable
24 prices established for a company under subsection 1 of this section shall be those
25 in effect on December thirty-first of the year preceding the year in which the
26 company is first subject to regulation under this section. Tariffs authorized
27 under subsection 9 of this section shall be phased in as provided under such
28 tariffs as approved by the commission.

29 4. (1) Except as otherwise provided in subsections 8 and 9 of this section
30 and section 392.248, the maximum allowable prices for exchange access and basic
31 local telecommunications services of a small, incumbent local exchange
32 telecommunications company regulated under this section shall not be changed
33 for a period of twelve months after the date the company is subject to regulation
34 under this section. Except as otherwise provided in subsections 8 and 9 of this
35 section and section 392.248, the maximum allowable prices for exchange access
36 and basic local telecommunications services of a large, incumbent local exchange
37 telecommunications company regulated under this section shall not be changed
38 prior to January 1, 2000. Thereafter, the maximum allowable prices for exchange
39 access and basic local telecommunications services of an incumbent local
40 exchange telecommunications company shall be annually changed by one of the
41 following methods:

42 (a) By the change in the telephone service component of the Consumer
43 Price Index (CPI-TS), as published by the United States Department of Commerce
44 or its successor agency for the preceding twelve months; **provided however,**
45 **that if such a change in the CPI-TS for the preceding twelve months is**
46 **negative, upon request by the company and approval by the commission**
47 **for good cause shown, the commission may waive any requirement to**
48 **reduce prices of exchange access and basic local telecommunications**
49 **service and those existing prices shall remain the maximum allowable**
50 **prices for purposes of this section until the next annual change. All**
51 **revenues that are attributable to a CPI-TS reduction waiver shall be**
52 **used for the purposes approved by the commission to benefit local**
53 **exchange ratepayers, including, but not limited to expanded local**
54 **calling scopes or improvements in facilities or services in a specific**
55 **exchange or exchanges; or**

56 (b) Upon request by the company and approval by the commission, by the

57 change in the Gross Domestic Product Price Index (GDP-PI), as published by the
58 United States Department of Commerce or its successor agency for the preceding
59 twelve months, minus the productivity offset established for telecommunications
60 service by the Federal Communication Commission and adjusted for exogenous
61 factors;

62 (2) The commission shall approve a change to a maximum allowable price
63 **or make a determination regarding a request for waiver** filed pursuant
64 to paragraph (a) of subdivision (1) of this subsection within forty-five days of
65 filing of notice by the local exchange telecommunications company. An incumbent
66 local exchange telecommunications company shall file a tariff to reduce the rates
67 charged for any service in any case in which the current rate exceeds the
68 maximum allowable price established under this subsection.

69 (3) As a part of its request under paragraph (b) of subdivision (1) of this
70 subsection, a company may seek commission approval to use a different
71 productivity offset in lieu of the productivity offset established by the Federal
72 Communication Commission. An adjustment under paragraph (b) of subdivision
73 (1) of this subsection shall not be implemented if the commission determines,
74 after notice and hearing to be conducted within forty-five days of the filing of the
75 notice of a change to a maximum allowable price, that it is not in the public
76 interest. In making such a determination, the commission shall consider the
77 relationship of the proposed price of service to its cost and the impact of
78 competition on the incumbent local exchange telecommunications company's
79 intrastate revenues from regulated telecommunications services. Any
80 adjustments for exogenous factors shall be allocated to the maximum allowable
81 prices for exchange access and basic local telecommunications service in the same
82 percentage as the revenues for such company bears to such company's total
83 revenues from basic local, nonbasic and exchange access services for the
84 preceding twelve months.

85 (4) For the purposes of this section, the term "exogenous factor" shall
86 mean a cumulative impact on a local exchange telecommunications company's
87 intrastate regulated revenue requirement of more than three percent, which is
88 attributable to federal, state or local government laws, regulations or policies
89 which change the revenue, expense or investment of the company, and the term
90 "exogenous factor" shall not include the effect of competition on the revenue,
91 expense or investment of the company nor shall the term include any assessment
92 made under section 392.248.

93 (5) An incumbent local exchange telecommunications company may
94 change the rates for its services, consistent with the provisions of subsections 2
95 through 5 of section 392.200, but not to exceed the maximum allowable prices, by
96 filing tariffs which shall be approved by the commission within thirty days,
97 provided that any such rate is not in excess of the maximum allowable price
98 established for such service under this section.

99 5. Each telecommunications service offered to business customers, other
100 than exchange access service, of an incumbent local exchange telecommunications
101 company regulated under this section shall be classified as competitive in any
102 exchange in which at least two nonaffiliated entities in addition to the incumbent
103 local exchange company are providing basic local telecommunications service to
104 business customers within the exchange. Each telecommunications service
105 offered to residential customers, other than exchange access service, of an
106 incumbent local exchange telecommunications company regulated under this
107 section shall be classified as competitive in an exchange in which at least two
108 nonaffiliated entities in addition to the incumbent local exchange company are
109 providing basic local telecommunications service to residential customers within
110 the exchange. For purposes of this subsection:

111 (1) Commercial mobile service providers as identified in 47 U.S.C. Section
112 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing
113 basic local telecommunications service, provided that only one such nonaffiliated
114 provider shall be considered as providing basic local telecommunications service
115 within an exchange;

116 (2) Any entity providing local voice service in whole or in part over
117 telecommunications facilities or other facilities in which it or one of its affiliates
118 have an ownership interest shall be considered as a basic local
119 telecommunications service provider regardless of whether such entity is subject
120 to regulation by the commission. A provider of local voice service that requires
121 the use of a third party, unaffiliated broadband network or dial-up Internet
122 network for the origination of local voice service shall not be considered a basic
123 local telecommunications service provider. For purposes of this subsection only,
124 a "broadband network" is defined as a connection that delivers services at speeds
125 exceeding two hundred kilobits per second in at least one direction;

126 (3) Regardless of the technology utilized, local voice service shall mean
127 two-way voice service capable of receiving calls from a provider of basic local
128 telecommunications services as defined by subdivision (4) of section 386.020,

129 RSMo;

130 (4) Telecommunications companies only offering prepaid
131 telecommunications service or only reselling telecommunications service as
132 defined in subdivision (46) of section 386.020, RSMo, in the exchange being
133 considered for competitive classification shall not be considered entities providing
134 basic telecommunications service; and

135 (5) "Prepaid telecommunications service" shall mean a local service for
136 which payment is made in advance that excludes access to operator assistance
137 and long distance service;

138 (6) Upon request of an incumbent local exchange telecommunications
139 company seeking competitive classification of business service or residential
140 service, or both, the commission shall, within thirty days of the request,
141 determine whether the requisite number of entities are providing basic local
142 telecommunications service to business or residential customers, or both, in an
143 exchange and if so shall approve tariffs designating all such business or
144 residential services other than exchange access service, as competitive within
145 such exchange. Notwithstanding any other provision of this subsection, any
146 incumbent local exchange company may petition the commission for competitive
147 classification within an exchange based on competition from any entity providing
148 local voice service in whole or in part by using its own telecommunications
149 facilities or other facilities or the telecommunications facilities or other facilities
150 of a third party, including those of the incumbent local exchange company as well
151 as providers that rely on an unaffiliated third-party Internet service. The
152 commission shall approve such petition within sixty days unless it finds that such
153 competitive classification is contrary to the public interest. The commission shall
154 maintain records of regulated providers of local voice service, including those
155 regulated providers who provide local voice service over their own facilities, or
156 through the use of facilities of another provider of local voice service. In
157 reviewing an incumbent local exchange telephone company's request for
158 competitive status in an exchange, the commission shall consider their own
159 records concerning ownership of facilities and shall make all inquiries as are
160 necessary and appropriate from regulated providers of local voice service to
161 determine the extent and presence of regulated local voice providers in an
162 exchange. If the services of an incumbent local exchange telecommunications
163 company are classified as competitive under this subsection, the local exchange
164 telecommunications company may thereafter adjust its rates for such competitive

165 services upward or downward as it determines appropriate in its competitive
166 environment, upon filing tariffs which shall become effective within the time lines
167 identified in section 392.500. The commission shall, at least every two years, or
168 where an incumbent local exchange telecommunications company increases rates
169 for basic local telecommunications services in an exchange classified as
170 competitive, review those exchanges where an incumbent local exchange carrier's
171 services have been classified as competitive, to determine if the conditions of this
172 subsection for competitive classification continue to exist in the exchange and if
173 the commission determines, after hearing, that such conditions no longer exist for
174 the incumbent local exchange telecommunications company in such exchange, it
175 shall reimpose upon the incumbent local exchange telecommunications company,
176 in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection
177 4 of section 392.200 and the maximum allowable prices established by the
178 provisions of subsections 4 and 11 of this section, and, in any such case, the
179 maximum allowable prices established for the telecommunications services of
180 such incumbent local exchange telecommunications company shall reflect all
181 index adjustments which were or could have been filed from all preceding years
182 since the company's maximum allowable prices were first adjusted pursuant to
183 subsection 4 or 11 of this section.

184 6. Nothing in this section shall be interpreted to alter the commission's
185 jurisdiction over quality and conditions of service or to relieve telecommunications
186 companies from the obligation to comply with commission rules relating to
187 minimum basic local and interexchange telecommunications service.

188 7. A company regulated under this section shall not be subject to
189 regulation under subsection 1 of section 392.240.

190 8. An incumbent local exchange telecommunications company regulated
191 under this section may reduce intrastate access rates, including carrier common
192 line charges, subject to the provisions of subsection 9 of this section, to a level not
193 to exceed one hundred fifty percent of the company's interstate rates for similar
194 access services in effect as of December thirty-first of the year preceding the year
195 in which the company is first subject to regulation under this section. Absent
196 commission action under subsection 10 of this section, an incumbent local
197 exchange telecommunications company regulated under this section shall have
198 four years from the date the company becomes subject to regulation under this
199 section to make the adjustments authorized under this subsection and subsection
200 9 of this section. Nothing in this subsection shall preclude an incumbent local

201 exchange telecommunications company from establishing its intrastate access
202 rates at a level lower than one hundred fifty percent of the company's interstate
203 rates for similar access services in effect as of December thirty-first of the year
204 preceding the year in which the company is first subject to regulation under this
205 section.

206 9. Other provisions of this section to the contrary notwithstanding and no
207 earlier than January 1, 1997, the commission shall allow an incumbent local
208 exchange telecommunications company regulated under this section which
209 reduces its intrastate access service rates pursuant to subsection 8 of this section
210 to offset the revenue loss resulting from the first year's access service rate
211 reduction by increasing its monthly maximum allowable prices applicable to basic
212 local exchange telecommunications services by an amount not to exceed one dollar
213 fifty cents. A large incumbent local exchange telecommunications company shall
214 not increase its monthly rates applicable to basic local telecommunications service
215 under this subsection unless it also reduces its rates for intraLATA interexchange
216 telecommunications services by at least ten percent. No later than one year after
217 the date the incumbent local exchange telecommunications company becomes
218 subject to regulation under this section, the commission shall complete an
219 investigation of the cost justification for the reduction of intrastate access rates
220 and the increase of maximum allowable prices for basic local telecommunications
221 service. If the commission determines that the company's monthly maximum
222 allowable average statewide prices for basic local telecommunications service
223 after adjustment pursuant to this subsection will be equal to or less than the long
224 run incremental cost, as defined in section 386.020, RSMo, of providing basic local
225 telecommunications service and that the company's intrastate access rates after
226 adjustment pursuant to this subsection will exceed the long run incremental cost,
227 as defined in section 386.020, RSMo, of providing intrastate access services, the
228 commission shall allow the company to offset the revenue loss resulting from the
229 remaining three-quarters of the total needed to bring that company's intrastate
230 access rates to one hundred fifty percent of the interstate level by increasing the
231 company's monthly maximum allowable prices applicable to basic local
232 telecommunications service by an amount not to exceed one dollar fifty cents on
233 each of the next three anniversary dates thereafter; otherwise, the commission
234 shall order the reduction of intrastate access rates and the increase of monthly
235 maximum allowable prices for basic local telecommunications services to be
236 terminated at the levels the commission determines to be cost-justified. The total

237 revenue increase due to the increase to the monthly maximum allowable prices
238 for basic local telecommunications service shall not exceed the total revenue loss
239 resulting from the reduction to intrastate access service rates.

240 10. Any telecommunications company whose intrastate access costs are
241 reduced pursuant to subsections 8 and 9 of this section shall decrease its rates
242 for intrastate toll telecommunications service to flow through such reduced costs
243 to its customers. The commission may permit a telecommunications company to
244 defer a rate reduction required by this subdivision until such reductions, on a
245 cumulative basis, reach a level that is practical to flow through to its customers.

246 11. The maximum allowable prices for nonbasic telecommunications
247 services of a small, incumbent local exchange telecommunications company
248 regulated under this section shall not be changed until twelve months after the
249 date the company is subject to regulation under this section or, on an
250 exchange-by-exchange basis, until an alternative local exchange
251 telecommunications company is certified and providing basic local
252 telecommunications service in such exchange, whichever is earlier. The
253 maximum allowable prices for nonbasic telecommunications services of a large,
254 incumbent local exchange telecommunications company regulated under this
255 section shall not be changed until January 1, 1999, or on an
256 exchange-by-exchange basis, until an alternative local exchange
257 telecommunications company is certified and providing basic local
258 telecommunications service in such exchange, whichever is earlier. Thereafter,
259 the maximum allowable prices for nonbasic telecommunications services of an
260 incumbent local exchange telecommunications company may be annually
261 increased by up to five percent for each of the following twelve-month periods
262 upon providing notice to the commission and filing tariffs establishing the rates
263 for such services in such exchanges at such maximum allowable prices. This
264 subsection shall not preclude an incumbent local exchange telecommunications
265 company from proposing new telecommunications services and establishing prices
266 for such new services. An incumbent local exchange telecommunications company
267 may change the rates for its services, consistent with the provisions of
268 subsections 2 through 5 of section 392.200, but not to exceed the maximum
269 allowable prices, by filing tariffs which shall be approved by the commission
270 within thirty days, provided that any such rate is not in excess of the maximum
271 allowable price established for such service under this section.

272 12. The commission shall permit an incumbent local exchange

273 telecommunications company regulated under this section to determine and set
274 its own depreciation rates which shall be used for all intrastate regulatory
275 purposes. Provided, however, that such a determination is not binding on the
276 commission in determining eligibility for or reimbursement under the universal
277 service fund established under section 392.248.

278 13. Prior to January 1, 2006, the commission shall determine the
279 weighted, statewide average rate of nonwireless basic local telecommunications
280 services as of August 28, 2005. The commission shall likewise determine the
281 weighted, statewide average rate of nonwireless basic local telecommunications
282 services two years and five years after August 28, 2005. The commission shall
283 report its findings to the general assembly by January 30, 2008, and provide a
284 second study by January 30, 2011. If the commission finds that the weighted,
285 statewide average rate of nonwireless basic local telecommunications service in
286 2008 or 2011 is greater than the weighted, statewide average rate of nonwireless
287 basic local telecommunications service in 2006 multiplied by one plus the
288 percentage increase in the Consumer Price Index for all goods and services for the
289 study periods, the commission shall recommend to the general assembly such
290 changes in state law as the commission deems appropriate to achieve the
291 purposes set forth in section 392.185. In determining the weighted, statewide
292 average rate of nonwireless basic local telecommunications service, the
293 commission shall exclude rate increases to nonwireless basic telecommunications
294 service permitted under subsections 8 and 9 of this section and section 392.240
295 or exogenous costs incurred by the providers of nonwireless basic local
296 telecommunications service.

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